



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**[Docket ID No. EPA-R08-OAR-2018-0389; FRL-9985-60-Region 8]**

**North Dakota Pollutant Discharge Elimination System; Transfer**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of a proposed program revision to transfer the authority to implement and enforce the North Dakota Pollutant Discharge Elimination System (NDPDES) program from the North Dakota Department of Health (NDDOH) to the newly established North Dakota Department of Environmental Quality (NDDEQ). If approved, the NDDEQ will administer the approved NDPDES program regulating discharges of pollutants into waters of the United States under its jurisdiction as described in the state's program application. The EPA will retain the authority to issue NPDES permits for facilities located in Indian country and/or discharging to waters in Indian country.

**DATES:** Written comments and/or requests for a public hearing must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2018-0389, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Wastewater Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** VelRey Lozano, U.S. Environmental Protection Agency, Region 8, (8WP-CWW), 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6128, email [lozano.velrey@epa.gov](mailto:lozano.velrey@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background Information**

On April 7, 2017, the Governor of North Dakota signed a bill into law mandating the creation of a new North Dakota Department of Environmental Quality. NDDEQ will be a cabinet-level agency that will implement all of the federally authorized or delegated environmental programs currently run by the Environmental Health Section of NDDOH. The law gives NDDOH until July 1, 2019, to obtain the necessary program authorizations and approvals from EPA to allow NDDEQ to implement the State's delegated and/or authorized environmental programs.

A state may revise its NPDES program. 40 CFR 123.62(a). In doing so, the State must submit a modified program description, Attorney General's statement, Memorandum of Agreement or other such documentation as EPA determines to be necessary under the circumstances. 40 CFR 123.62(b). States with approved programs are required to notify EPA whenever they propose to transfer all or part of the approved State agency to any other State agency and to identify any new division of responsibilities amongst the agencies involved. 40 C.F.R. 123.62(c).

Organizational charts required in the State's original authorization package must be revised and resubmitted. *Id.* The new agency is not authorized to administer the program until approved by the Regional Administrator.

On July 30, 2018, the EPA received a complete program revision package from the state of North Dakota. The EPA has determined the program revision package contains all the required elements. The full program revision package is available for inspection and copying at the addresses appearing in the **ADDRESSES** section of this notice.

### **General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action are: The EPA; and the regulated community and residents within the state of North Dakota (see Table 1). This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to affect.

**Table 1—Entities Potentially Affected by This Proposed Approval**

<b>Category</b>	<b>Examples of potentially affected entities</b>
State and Indian Tribal Governments, and Federal Agencies	States and Indian tribes that provide certification under section 401 of the CWA; States, Indian Tribes, and federal agencies that own or operate treatment works outside of Indian country that require an NDPDES permit.
Municipalities	POTWs required to apply for or seek coverage under an NDPDES individual or general permit and to perform routine monitoring as a condition of an NDPDES permit.
Industry	Facilities required to apply for or seek coverage under an NDPDES individual or general permit and to perform routine monitoring as a condition of an NDPDES permit.
NDPDES Stakeholders	Any party that may review and provide comments on NDPDES permits.

Residents of the state of North Dakota	Any party that may review and provide comments on NDPDES permits.
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If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What action is EPA taking?*

With this action, the EPA is providing notice of a proposed program revision to the State of North Dakota's approved NPDES program to transfer authority to administer the NDPDES program from the NDDOH to the NDDEQ. This action is not changing the current scope of North Dakota's NDPDES program and is transferring authority to another agency to implement the state's current NPDES program as part of the larger effort to move all federally authorized or delegated environmental programs from the NDDOH to the NDDEQ. If the proposed program revision is approved, EPA will retain the authority to issue permits for facilities located in Indian country<sup>1</sup> and/or discharging to waters in Indian country.

*C. What is EPA's authority for taking this action?*

This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. Under 40 CFR 123.62(b)(2), the EPA is required to determine whether proposed program revisions are substantial and, if so, issue public notice and provide an opportunity to

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<sup>1</sup> EPA's approval of North Dakota's request to transfer its NPDES authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality does not extend to Indian country. As defined in 18 U.S.C. Section 1151, Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within North Dakota: The Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; any land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. EPA, or eligible Indian tribes, as appropriate, will retain responsibilities under the Clean Water Act NPDES program for wastewater discharges in Indian country.

comment for a period of at least 30 days. The EPA considers this transfer of state authority to be substantial.

Dated: October 24, 2018.

Darcy O'Connor,

Assistant Regional Administrator, Office of Water Protection, EPA, Region 8.

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